

R E M A R K S

Careful review and examination of the subject application are noted and appreciated.

SUPPORT FOR THE CLAIM AMENDMENTS

Support for the claim amendments may be found in the specification, for example, on page 9 lines 1-20, page 9 line 32- page 10 line 8, page 13 lines 26-32, page 16 lines 6-34, page 19 lines 17-26, page 22 line 17-page 23 line 2, page 23 lines 17-26, page 26 lines 10-17 and FIGS. 1, 2, 12C and 13, as originally filed. Thus, no new matter has been added.

CLAIM REJECTIONS UNDER 35 U.S.C. §102

The rejection of claims 47, 55-57, 77, 84, 91, 98, 105 and 107-110 under 35 U.S.C. §102(b) as being anticipated by Fujimoto (US Patent No. 5,339,831) has been obviated by amendment and should be withdrawn.

Fujimoto concerns a home medical system and medical apparatus for use therewith (title). In contrast, claim 47 of the present invention provides a system for monitoring a physiological condition of an individual using a communication network generally comprising a central processing unit, a remote processing apparatus and a computer. The central processing unit (A) may have access to one or more databases and (B) may be configured to (i) read a

template program from the database, (ii) generate a first program by modifying the template program in response to input data received via the communication network, the first program generally collects measurement data relating to the physiological condition of the individual, (iii) assign the first program to the individual in response to input information received from the communication network and (iv) transmit the first program via the communication network. The remote processing apparatus may be remotely located from and in signal communication with the central processing unit via the communication network. The remote processing apparatus is generally configured to (i) receive the first program from the communication network, (ii) connect to a measuring device, (iii) execute the first program to collect the measurement data according to a collect command contained in the first program and (iv) transmit the measurement data to the central processing unit via the communication network according to a transmit command contained in the first program. The computer may be remotely located from and in signal communication with the central processing unit via the communication network. The computer is generally configured to (i) transmit the input data to the central processing unit via the communication network, (ii) transmit the input information to the central processing unit via the communication network, (iii) receive the measurement data from the central processing unit via the communication network and (iv) present a report generated based

on the measurement data to a health care provider. Claims 77 and 91 provide similar limitations.

Furthermore, claim 59 of the present invention provides a system for monitoring a physiological condition of an individual using a communication network generally comprising a central processing unit, a remote processing apparatus and a computer. The central processing unit (A) may have access to one or more databases and (B) may be configured to (i) generate a first program that collects blood glucose data relating to the physiological condition of the individual, (ii) add input data received from the communication network to the first program to adapt the first program to the individual, (iii) assign the first program to the individual in response to input information received from the communication network and (iv) transmit the first program via the communication network. The remote processing apparatus may be remotely located from and in signal communication with the central processing unit via the communication network. The remote processing apparatus is generally configured to (i) receive the first program from the communication network, (ii) connect to a measuring device, (iii) execute the first program to collect the blood glucose data according to a collect command in the first program and (iv) transmit the blood glucose data to the central processing unit via the communication network. The computer may be remotely located from and in signal communication with the central

processing unit via the communication network. The computer is generally configured to (i) transmit the input data to the central processing unit via the communication network, (ii) transmit the input information to the central processing unit via the communication network, (iii) receive the blood glucose data from the central processing unit via the communication network and (iv) present a report generated based on the blood glucose data to a health care provider. Claims 84 and 98 provide similar limitations. However, the claims include limitations not disclosed or suggested by the cited reference as arranged in the claims for the reasons given below.

Claims 47, 59, 77, 84, 91 and 98 are independently patentable over the cited references. Claim 47 provides (i) a central processing unit, (ii) a remote processing apparatus remotely located from and in signal communication with the central processing unit via the communication network and (iii) a computer remotely located from and in signal communication with the central processing unit via the communication network. Claims 59, 77, 84, 91 and 98 provide similar limitations. In contrast, Fujimoto is silent regarding all three types of machines on a communication network as provided in the claims. In particular, FIG. 1 of Fujimoto illustrates a medical apparatus 8 connected to a host computer 5 via a telecommunication line 4. Fujimoto is silent regarding another type of computer connected to the host computer

5 by way of the telecommunication line 4. Therefore, the cited reference does not disclose or suggest (i) a central processing unit, (ii) a remote processing apparatus remotely located from and in signal communication with the central processing unit via the communication network and (iii) a computer remotely located from and in signal communication with the central processing unit via the communication network, as presently claimed.

Claim 47 further provides that (A) the computer is configured to (i) transmit the input data to the central processing unit via the communication network and (B) the central processing unit is configured to (i) read a template program from a database and (ii) generate a first program by modifying the template program in response to input data received via the communication network. Claims 77 and 91 provide similar limitations. In contrast, the host computer 5 of Fujimoto does not generate a user-specific script program by modifying a template program based on input data received via telecommunication line 4. Therefore, the claims include limitations not disclosed or suggested by the cited reference.

In particular, the Board concluded that a list of numbers for questions already stored in the medical apparatus 8 of Fujimoto is similar to the claimed program, see findings of fact 5 in the May 25, 2011 Decision on Appeal. Assuming, *arguendo*, that the finding of fact 5 is correct (for which the Applicant's

representative does not necessarily agree), Fujimoto is silent that the list of numbers for the questions is generated by the host computer 5 in response to input data received over telecommunication line 4. Fujimoto is also silent that the list of numbers for the questions is a modified version of a template program. Therefore, the cited reference does not disclose or suggest that (A) the computer is configured to (i) transmit the input data to the central processing unit via the communication network and (B) the central processing unit is configured to (i) read a template program from a database and (ii) generate a first program by modifying the template program in response to input data received via the communication network, as presently claimed.

Claim 47 further provides a remote processing apparatus configured to execute the first program to collect measurement data according to a collect command contained in the first program. Claims 59, 77, 84, 91 and 98 provide similar limitations. In contrast, the list of numbers in Fujimoto does not contain information necessary for the medical apparatus 8 to collect information from a measuring device, such as the medical terminal equipment 1 of Fujimoto. Instead, the program of Fujimoto appears to be nothing more than a list of numbers. One of ordinary skill in art would not understand a number to be an executable command. One of ordinary skill in the art would not appear to understand that a number can cause the medical apparatus 8 to collect data

from the medical terminal equipment 1. Therefore, the claims include limitations not disclosed or suggested by the cited reference.

In particular, Fujimoto states that the questions for diagnosis inquiry are stored in advance in the medical terminal equipment 1 (see column 5 lines 64-66). It is these pre-loaded programs containing the questions that appear to be executed by the medical apparatus 8 of Fujimoto to present the questions to the patient. The list of numbers merely identifies which parts of the program are used. Therefore, Fujimoto teaches that the program executed by the medical apparatus 8 is "loaded in advance" instead of being downloaded from the host computer 5 via the telecommunication line 4.

Furthermore, the findings of fact 7 in the Decision on Appeal indicates that Fujimoto discloses a script program executing in the medical apparatus 8 to initiate collection of data from the attached medical terminal equipment 1. However, the finding of fact 7 is silent regarding the script program in question being generated in the host apparatus 5 and then transfer to the medical apparatus 8 over the telecommunication line 4. The finding of fact 7 and the finding of fact 5 appear to mention two different "programs", one that initiates collection of data and the other which contains a list of numbers. The program from the finding of fact 5 does not contain not commands to initiate collection of

data. On the other hand, the program from the finding of fact 7 appears to be a built-in capability of the medical apparatus 8. There is no reason why the medical terminal equipment 1 of Fujimoto would be built to measure blood pressure and pulse (see column 2 lines 36-38) and yet not have the necessary software to measure the blood pressure and pulse as part of the equipment. Fujimoto appears to disclose a different configuration than as presently claimed. Therefore, the cited reference does not disclose or suggest a remote processing apparatus configured to execute the first program to collect measurement data according to a collect command contained in the first program, as presently claimed.

Claim 59 further provides that (A) the computer is configured to (i) transmit the input data to the central processing unit via the communication network, (ii) transmit the input information to the central processing unit via the communication network and (B) the central processing unit is configured to (ii) add input data received from the communication network to the first program to adapt the first program to the individual. Claims 84 and 98 provide similar limitations. In contrast, Fujimoto is silent that the list of numbers generated by the host computer 5 includes input information received via the telecommunication line 4. Therefore, the cited reference does not disclose or suggest that (A) the computer is configured to (i) transmit the input data to the central processing unit via the communication network, (ii)

transmit the input information to the central processing unit via the communication network and (B)the central processing unit is configured to (ii) add input data received from the communication network to the first program to adapt the first program to the individual, as presently claimed. As such, the presently claimed invention is fully patentable over the cited reference and the rejections should be withdrawn.

Furthermore, Applicant's representative respectfully traverses all of the inherency arguments made in the Decision on Appeal. Inherency requires certainty of results, not merely a possibility. MPEP §2112 also requires the Office to provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art. However, no basis in fact or technical reasoning have been provided. Therefore, the inherency arguments are merely conclusory statements that should be withdrawn.

Regarding the inherency asserted on page 8, there is no certainty that software transferred from the host computer 5 to the medical apparatus 8 includes a transmit command that necessarily causes measurement data to be transmitted back to the host computer 5. It is possible that firmware and/or hardware built into the medical apparatus 8 causes the transmission. Therefore, the

inherency argument on page 8 of the Decision on Appeal is in error and should be withdrawn.

Regarding the inherency argument on page 11 of the Decision on Appeal, there is no certainty that the communication apparatus (modem) 3 and the communication apparatus (modem) 2 of Fujimoto will hang up (disconnect the communication link) every time data is not being transmitted. Telephone modems circa 1992 generally included an input command that instructs the modem to hang up. The lack of data flowing across the telephone lines (telecommunication line 4) does not cause such modems to automatically hang up. Therefore, the inherency argument on page 11 of the Decision on Appeal is in error and should be withdrawn.

Regarding the inherency argument on page 12 of the Decision on Appeal, there is no certainty that the communication apparatus (modem) 3 and the communication apparatus (modem) 2 of Fujimoto will intermittently dial up (establish the communication link) and hang up (disconnect the communication link). Intermittent establishment/disconnection requires multiple dial up sessions. In contrast, the medical apparatus 8 may dial up the host computer 5 zero times or a single time. Therefore, the inherency argument on page 12 of the Decision on Appeal is in error and should be withdrawn.

Further regarding claims 105 and 107-110, neither the Decision on Appeal or the Office Action mailed August 9, 2007

addresses the claim limitation for disconnecting the communication link after a period of time after each establishment. Fujimoto is also silent regarding a communication link being disconnected a period of time after each establishment. Therefore, the cited reference does not disclose or suggest that the remote processing apparatus is further configured to (ii) disconnect the communication link after a period of time after each establishment, as presently claimed. As such, the claims are fully patentable over the cited reference and the rejections should be withdrawn.

Claims 55-57, 105 and 107-110 depend, either directly or indirectly, from independent claims 47, 59, 77, 84, 91 or 98, which are now believed to be allowable. Therefore, the dependent claims are fully patentable over the cited reference and the rejections should be withdrawn.

CLAIM REJECTIONS UNDER 35 U.S.C. §103

The rejection of claims 48, 49, 51-54, 58-62, 78-83, 85-90, 92-97, 99-104 and 106 under 35 U.S.C. §103(a) as being unpatentable over Fujimoto has been obviated by amendment and should be withdrawn.

Regarding claim 59, the Decision on Appeal does not offer any objective evidence or appropriate explanation why this claim is considered to be obvious over Fujimoto without Heinonen.

Therefore, *prima facie* obviousness has not been established and the rejection should be withdrawn.

Applicant's representative respectfully traverses all of the inherency arguments made in the Decision on Appeal. Inherency requires certainty of results, not merely a possibility. MPEP §2112 also requires the Office to provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art. However, no basis in fact or technical reasoning have been provided. Therefore, the inherency arguments are merely conclusory statements that should be withdrawn.

Regarding the inherency asserted on page 15, there is no certainty that the peripherals of the host computer 5 contain software that (i) receives input information from the health care provide and (ii) communicates the input information to the host computer 5. In particular, the display and printer 6 illustrated in FIG. 1 of Fujimoto are output devices that do not receive input information from a health care provider. The keyboard illustrated in FIG. 1 of Fujimoto does not contain any software. Therefore, the inherency argument on page 15 of the Decision on Appeal is in error and should be withdrawn.

Regarding claim 106, neither the Decision on Appeal or the Office Action mailed August 9, 2007 addresses the claim

limitation for disconnecting the communication link after a period of time after each establishment. Fujimoto is also silent regarding a communication link being disconnected a period of time after each establishment. Therefore, the cited reference does not teach or suggest that the remote processing apparatus is further configured to (ii) disconnect the communication link after a period of time after each establishment, as presently claimed. As such, claim 106 is fully patentable over the cited reference and the rejection should be withdrawn.

Claims 48, 49, 51-54, 58-62, 78-83, 85-90, 92-97, 99-104 and 106 depend, either directly or indirectly, from independent claims 47, 59, 77, 84, 91 or 98, which are now believed to be allowable. Therefore, the dependent claims are fully patentable over the cited reference and the rejections should be withdrawn.

Accordingly, the present application is in condition for allowance. Early and favorable action by the Examiner is respectfully solicited.

The Examiner is respectfully invited to call the Applicant's representative at 586-498-0670 should it be deemed beneficial to further advance prosecution of the application.

Respectfully submitted,

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A handwritten signature in dark ink, appearing to read "John J. Ignatowski", is written over a horizontal line.

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c/o Health Hero Network

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